

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL H. BROWN, Next Friend of
MICHAEL PATRICK BROWN, Minor,

Plaintiff-Appellant,

v

DAVID MATTHEW THOMAS HUDY,

Defendant-Appellee.

UNPUBLISHED
February 22, 2002

No. 221914
Wayne Circuit Court
LC No. 97-721033-NI

Before: Smolenski, P.J., and Doctoroff and Owens, JJ.

PER CURIAM.

Plaintiff appeals by delayed leave granted from a circuit court order granting defendant's motion for a directed verdict. We reverse and remand for a new trial. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was driving a car in which the minor plaintiff and another boy were passengers. The minor plaintiff was injured when defendant lost control of the vehicle and it flipped over. This automobile negligence action resulted. Following the close of plaintiff's proofs at trial, defendant moved for a directed verdict. Relying on *Boyd v McKeever*, 384 Mich 501; 185 NW2d 344 (1971), defendant argued that recovery was precluded because he and the minor plaintiff were engaged in a joint enterprise. The trial court agreed and dismissed the case.

The trial court's ruling on a directed verdict motion is reviewed de novo. *Meagher v Wayne State University*, 222 Mich App 700, 708; 565 NW2d 401 (1997). Issues of law are also reviewed de novo on appeal. *In re Jude*, 228 Mich App 667, 670; 578 NW2d 704 (1998).

The joint enterprise or joint venture doctrine was first used by defendant drivers as a bar to a negligence action by their passengers. If the driver and passenger "were engaged in a joint enterprise, the negligence of the defendant would be imputable to the [plaintiff], and would bar recovery," under the doctrine of contributory negligence. *Frisorger v Shepse*, 251 Mich 121, 123; 230 NW 926 (1930), citing *Hanser v Youngs*, 212 Mich 508, 512; 180 NW 409 (1920). The doctrine of contributory negligence as a complete bar to recovery was discarded and replaced by the doctrine of comparative negligence more than twenty years ago. *Placek v City of Sterling Heights*, 405 Mich 638, 650; 275 NW2d 511 (1979). Further, the Supreme Court determined that it had misapplied the joint enterprise doctrine in *Frisorger* and overruled that decision, holding that the negligence of a member of a joint enterprise is not imputable to another member,

in an action by one against the other. *Bostrom v Jennings*, 326 Mich 146, 157; 40 NW2d 97 (1949).

After the Legislature enacted the guest passenger statute, MCL 257.401, which precluded a guest passenger in an automobile from suing the owner or operator for ordinary negligence, *Manistee Bank & Trust Co v McGowan*, 394 Mich 655, 672; 232 NW2d 636 (1975), plaintiffs sought to avoid the statutory bar by claiming that they were not guests but were engaged with the driver in a joint enterprise. *Boyd, supra* at 506; *Troutman v Ollis*, 164 Mich App 727, 736; 417 NW2d 589 (1987). Thus, in *Boyd*, the plaintiffs claimed that “the accident resulted from ordinary negligence on the part of the driver of the car and, further, that all of the occupants of the car were engaged in a joint enterprise.” *Boyd, supra* at 503. Contrary to the instant defendant’s argument to the trial court, it was not the existence of a joint enterprise that permitted the *Boyd* defendants to avoid liability; rather, the trial court directed a verdict for the defendants because “the facts failed to establish the existence of a joint enterprise.” *Id.* The guest passenger statute was declared unconstitutional in *Manistee Bank & Trust Co, supra*, and the statute was later amended to exclude that provision. “Thus, the theory of joint enterprise has been limited to third parties injured as a result of the negligent activity of the joint enterprise. *McLean v Wolverine Moving & Storage Co*, 187 Mich App 393, 399; 468 NW2d 230 (1991). The doctrine did not limit plaintiff’s recovery in this action and thus the trial court erred in granting defendant’s motion.

Reversed and remanded for a new trial. We do not retain jurisdiction.

/s/ Michael R. Smolenski

/s/ Martin M. Doctoroff

/s/ Donald S. Owens